

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ANTHONY J. DIVINCENZO, <i>Pro Se</i> ,)	Case No.: 1:07 CV 1830
)	
Petitioner)	JUDGE SOLOMON OLIVER, JR.
)	
v.)	
)	
JULIUS WILSON,)	
)	
Respondent)	<u>ORDER</u>

On June 20, 2007, Petitioner Anthony J. DiVincenzo (“Petitioner” or “DiVincenzo”), *pro se*, filed a Petition for Writ of Habeas Corpus (“Petition,” ECF No. 1), pursuant to 28 U.S.C. § 2254, challenging the constitutionality of his state court conviction for one count of aggravated burglary in violation of O.R.C. § 2911.11(A)(2). (*See* Judgment Entry, *State of Ohio v. DiVincenzo*, No. 05-CR-35, Resp’t’s Ex. 4, ECF No. 10-2, at 18.) In his Petition, DiVincenzo alleged one ground for relief for ineffective assistance of appellate counsel. (Pet. at 5.)

This court referred the case to Magistrate Judge Nancy A. Vecchiarelli for preparation of a Report and Recommendation. (ECF No. 5.) On October 25, 2007, Respondent Julius Wilson, the Warden of the Richland Correctional Institution (“Respondent”) timely filed his Return of Writ. (ECF No. 10.) Petitioner timely filed his Answer to Respondent’s Return of Writ on February 21, 2008. (ECF No. 15.)

On April 29, 2008, the Magistrate Judge submitted her Report and Recommendation, recommending that DiVincenzo’s Petition be dismissed. (ECF No. 18.) Specifically, the Magistrate

Judge found that Petitioner had failed to show that he was prejudiced by the alleged deficiencies of his appellate counsel.

Petitioner's Objections to the Report and Recommendation were initially due May 13, 2008. However, on April 30, 2008, the day after the Report and Recommendation was issued, Petitioner filed notice that his address had changed. (ECF No. 19.) Consequently, on May 19, 2008, the court mailed a copy of the Report and Recommendation to Petitioner at his new address, 7021 Parkland Drive, Independence, Ohio, 44131, and granted him until June 3, 2008, to file Objections. (5/19/08 Remark [non-document].) As of the date of this Order, Petitioner has not filed any Objections to the Report and Recommendation. By failing to do so, he has waived the right to appeal the Magistrate Judge's recommendation. *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

The court finds, after careful review of the Magistrate Judge's Report and Recommendation and all other relevant documents, that the Magistrate Judge's conclusions are fully supported by the record and controlling case law. Accordingly, the court adopts as its own the Magistrate Judge's Report and Recommendation. (ECF No. 18.)

Consequently, DiVincenzo's Petition (ECF No. 1) is hereby denied, and final judgment is entered in favor of Respondent. The court further certifies that pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be taken in good faith, and there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

IT IS SO ORDERED.

/s/ SOLOMON OLIVER, JR.
UNITED STATES DISTRICT JUDGE

June 9, 2008